

United States
Circuit Court of Appeals
For the Ninth Circuit. *8*

MARY H. WILSON, WINFRED T. WILSON
and FRANCIS A. WILSON,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United
States for the Northern District of California,
Southern Division

FILED

1935

PAUL P. O'BRIEN,
CLERK

United States

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD

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Attorneys for Plaintiff and Appellee.

In the Southern Division of the United States
District Court for the Northern District of
California.

In Equity—No. 3812-S

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MARY H. WILSON, WINFRED T. WILSON
and FRANCIS A. WILSON,

Defendants.

BILL OF COMPLAINT.

The Plaintiff, by its Attorney, H. H. McPike,
United States Attorney for the Northern District

of California, for its cause of action against the defendants herein, alleges:

I.

At all times mentioned herein, plaintiff was and now is a corporation and body politic.

II.

The defendant, Mary H. Wilson, is a citizen of the United States, of the State of California, residing at Piedmont, California, within the Northern District of California, and within the jurisdiction of this Court. The defendant, Winfred T. Wilson, is a citizen of the United States, of the State of California, residing at Piedmont, California, within the Northern District of California, and [1*] within the jurisdiction of this Court. The defendant Francis A. Wilson, is a citizen of the United States, of the State of California, residing at San Francisco, California, within the Northern District of California, and within the jurisdiction of this Court.

III.

This is a suit in equity by the United States of America, of a civil nature, arising under the laws of Congress, providing for internal revenue.

IV.

On or about March 12, 1919, one Henry Wilson, filed with the United States Collector of Internal

*Page numbering appearing at the foot of page of original certified Transcript of Record.

Revenue, for the First District of California, an individual income tax return for the calendar year 1918, and paid the tax as shown on said return. On February 14, 1924, a waiver was duly executed extending the time for assessment of said tax to March 12, 1925;

V.

On March 15, 1920, the said Henry Wilson filed an individual income tax return with the said Collector of Internal Revenue for the calendar year 1919 and paid the tax as shown on said return. On January 13, 1925, waivers were duly executed for both the year 1918 and 1919 extending the time for assessment of taxes, for both said tax years, to December 31, 1925.

VI.

On September 4, 1925, the Commissioner of Internal Revenue duly mailed to the said Henry Wilson a sixty-day letter, notifying him of proposed additional tax assess- [2] ments for the said year 1918 in the sum of \$6,591.52, and for the said year 1919 in the sum of \$2,596.80.

VII.

On October 26, 1925, the said Henry Wilson filed an appeal to the Board of Tax Appeals, covering the said proposed assessments, for both of said years, and the case was thereafter tried, and the order of the Board was entered on November 6, 1928, fixing the deficiency tax assessments as follows:

1918	
Tax	\$4,006.61
Interest	775.74
	<hr/>
Total	\$4,782.35
1919	
Tax	\$1,725.39
Interest	334.06
	<hr/>
Total	\$2,059.45

VIII.

No appeal was prosecuted from the said Board's redetermination of the tax aforesaid, and said order is now final.

IX.

The Commissioner of Internal Revenue, pursuant to the said final order of the Board of Tax Appeals fixing the deficiency tax assessments for the years 1918 and 1919, did on the 18th day of May, 1929, duly make assessments against said Henry Wilson for the said years 1918 and 1919, as follows:

1918	
Tax	\$4,006.61
Interest	775.74
	<hr/>
Total	\$4,782.35
1919	
Tax	\$1,725.39
Interest	334.06
	<hr/>
Total	\$2,059.45

Thereafter said assessments were duly certified to the Collector for collection, and said Collector has made repeated demands for payment of said additional assessments, but same remain due and unpaid with legal interest thereon.

X.

That the statute of limitations against assessments [3] was suspended during the time the Commissioner was prohibited from making all assessments and for sixty (60) days thereafter, or from September 4, 1925, the date of the mailing of the sixty-day letter, as hereinbefore alleged, to July 5, 1929, six months and sixty days after the Board's order was entered on November 6, 1928.

XI.

That on or about the 1st day of June 1928, said Henry Wilson voluntarily without consideration, assigned, transferred, and set over unto the defendants, Mary H. Wilson and Francis A. Wilson, jointly, all of the property then owned by him including cash on deposit in the San Francisco Bank, San Francisco, California, in the sum of \$427,649.17, and on which there was then and there interest accrued in the sum of \$3,088.56, making the amount then and there transferred, the sum of \$430,737.73. Said money so transferred was then and there the property of the said Henry Wilson and said transfer left the said Henry Wilson insolvent and said transfer further operated as a fraud on this plain-

tiff, in that said transfer left the said Henry Wilson without property, out of which this plaintiff's said tax assessments could be collected.

XII.

That as plaintiff is informed, and verily believes and therefore alleges, subsequent to the receipt by them of the sum of money transferred as aforesaid, the said Mary H. Wilson and Francis A. Wilson, pretending to act in accordance with a request made by the said Henry Wilson in his life time, did make a voluntary payment of \$67,681.92 to the defendant, Winfred T. Wilson, out of the monies so transferred to them by the said Henry Wilson, as hereinbefore set forth. [4]

XIII.

That the said Henry Wilson died on June 5, 1928, intestate, as this plaintiff has been informed, verily believes and therefore alleges, and that no administration of the estate of said decedent was had; that other than the property transferred as above set forth, the said decedent left no estate, out of which plaintiff's said claim or any part thereof could be collected or paid.

XIV.

As hereinbefore set forth, the property so transferred to and received by the defendants and each of them, had a net value far in excess of the 1918 and 1919 income taxes which were left owing and unpaid to plaintiff, as hereinbefore set forth.

XV.

The property so transferred to the defendants by the said Henry Wilson, as hereinbefore alleged, was received by said defendants and each of them impressed with a trust in equity for the benefit of the plaintiff, the United States of America, and that said defendants are jointly and severally liable to the plaintiff for the taxes left owing and unpaid to plaintiff, when said Henry Wilson so disposed of all of his property and thereby left himself without assets or property out of which plaintiff or its agents, or collectors could collect said taxes under ordinary available remedies.

XVI.

Plaintiff has no plain, adequate and complete remedy at law against the defendants herein and therefore brings this suit.

XVII.

This suit has been authorized by the Attorney General of the United States at the request of the Commissioner [5] of Internal Revenue.

Wherefore, in consideration of the facts herein stated, plaintiff prays: (1) That this Honorable Court adjudge and decree that the aforesaid property of the said Henry Wilson, so transferred to and received by the defendants, constitute a trust fund for the payment of the income taxes due and owing to the United States from the said Henry Wilson, as hereinbefore alleged, and that the said defendants herein shall account to this Court for

the aforesaid trust property, and that the fund aforesaid be applied to the payment of the taxes due and owing to the plaintiff as hereinbefore set forth. (2) That this Honorable Court adjudge and decree that the defendants be accountable to the plaintiff for the aforesaid taxes, to the extent of the value of the property of the said Henry Wilson, so transferred to and received by them, as aforesaid, and that said defendants jointly and severally, be ordered to pay the plaintiff the amount of taxes hereinbefore shown to be due plaintiff, together with legal interest as provided by law, from the day that said taxes became due. (3) That plaintiff have such other, further, different and general relief to which it may be entitled, together with a decree for costs. (4) That this Court grant unto plaintiff a writ of subpoena issued to the United States of America, issued out of and under the seal of this Honorable Court, directed to the above-named defendants, and commanding them on a day certain and under certain penalties therein expressed, to appear before this Honorable Court, then and there, to answer all and singular the premises and to stand by, abide and perform the final judgment of this Court here- [6] in. (5) Answer under oath is expressly ordered as to all of the defendants herein.

(signed) H. H. McPIKE

United States Attorney

(signed) ESTHER B. PHILLIPS

Assistant United States Attorney

Attorneys for Plaintiff

United States of America,
Northern District of California—ss.

Esther B. Phillips, being first duly sworn, deposes and says:

I hold the Office of Assistant United States Attorney for the Northern District of California. I make this verification in my official capacity in behalf of the plaintiff, the United States of America, because the plaintiff is a sovereign state. I have read the foregoing complaint and know its contents. The complaint is true of my own knowledge save as to matters therein alleged on information and belief, and as to those matters I believe the complaint to be true.

ESTHER B. PHILLIPS

Subscribed and sworn to before me this 26 day of December, 1934.

(Seal)

B. E. O'HARA

Deputy Clerk, U. S. District Court,
Northern District of California.

[Endorsed]: Filed Dec. 26, 1934. Walter B. Maling Clerk, By B. E. O'Hara, Deputy Clerk. [7]

[Title of District Court and Cause.]

ANSWER OF DEFENDANTS, MARY H. WILSON, WINFRED T. WILSON and FRANCIS A. WILSON.

Come now the above named defendants, Mary H. Wilson, Winfred T. Wilson and Francis A. Wilson, and each of them, and jointly and severally answer plaintiff's bill of complaint herein.

I.

For defense in point of law, said defendants and each of them aver that plaintiff's bill of complaint does not state facts sufficient to constitute a cause of action against the said defendants or any or either of them, or to entitle plaintiff to equitable or any relief against said defendants or any or either of them, because no facts alleged in said bill of complaint show the said defendants or any or either of them to have participated in or been parties to any fraudulent trans- [8] fer of money or other property by Henry Wilson to the said defendants or any or either of them, and because further no specific act of fraud on the part of Henry Wilson is alleged in said bill of complaint and because further it is not alleged in said bill of complaint that either the Commissioner of Internal Revenue of the United States or the United States Collector of Internal Revenue for the First District of California, ever made any demand for payment of any tax, as alleged to be due to plaintiff from Henry Wilson, on the defendants, or any or either of them.

Subject to and reserving all right to move to dismiss plaintiff's said bill of complaint for the reasons hereinabove stated, said defendants, Mary H. Wilson, Winfred T. Wilson and Francis A. Wilson, and each of them, admit, deny, and allege as follows:

II.

1. Said defendants are, and each of them is without knowledge that the United States Collector of Internal Revenue for the First District of Cali-

ifornia has made repeated demands for payment of additional assessments as referred to in paragraph IX of plaintiff's said bill of complaint, and said defendants and each of them deny that the said Collector ever made any demand for payment of said additional assessments or any part thereof on the said defendants or any or either of them, prior to the commencement of this suit.

2. Said defendants deny, and each of them denies, that on or about the first day of June, 1928, or at any other time, Henry Wilson assigned, transferred or set over to the defendants, Mary H. Wilson and Francis A. Wilson, jointly or to either of them, all of the property then owned by him, including cash on deposit in the San Francisco Bank, San Francisco, California, amounting with accrued interest to \$430,737.73. [9] Said defendants admit that on or about the first day of June, 1928, the said Henry Wilson transferred to the defendants, Mary H. Wilson and Francis A. Wilson, jointly, cash on deposit and accrued interest in the San Francisco Bank, San Francisco, California, amounting to \$430,737.73. Said defendants deny, and each of them denies, that the said sum of money then and there constituted all of the property then owned by the said Henry Wilson, and in this behalf said defendant aver that the said Henry Wilson then and there owned and possessed property of large value aside from the said sum of \$430,737.73, which was not transferred to the defendants, Mary H. Wilson and Francis A. Wilson, jointly, or transferred at all, and which the said Henry Wilson continued to

own to the date of his death. Said defendants deny, and each of them denies, that the transfer of \$430,737.73 by Henry Wilson to the defendants, Mary H. Wilson and Francis A. Wilson, jointly, on the first day of June 1928, left the said Henry Wilson insolvent. Said defendants deny, and each of them denies, that the said transfer of \$430,737.73 by the said Henry Wilson as aforesaid operated as a fraud on plaintiff in that it left the said Henry Wilson without property out of which plaintiff's tax assessments could be collected, or that it operated as a fraud on plaintiff at all, or was a fraud on plaintiff at all or otherwise, or that it left the said Henry Wilson without property out of which plaintiff's tax assessments could be collected.

3. Said defendants deny, and each of them denies, that the defendants, Mary H. Wilson and Francis A. Wilson, pretending to act in accordance with the request made by the said Henry Wilson in his lifetime, or pretending to act or acting in any other manner at all, made a voluntary payment of \$67,681.92 or any other sum to the defendant, Winfred T. Wilson, out of the moneys transferred to them by Henry Wilson, on or about [10] the first day of June, 1928, or that they transferred any money at all to the said Winfred T. Wilson, out of the money transferred by Henry Wilson on or about the first day of June, 1928.

4. Said defendants deny, and each of them denies, that other than the money transferred by Henry Wilson to defendants, Mary H. Wilson and

Francis A. Wilson, on or about the first day of June, 1928, aforesaid, the said Henry Wilson at the date of his death had no property out of which plaintiff's claim could be collected or paid; and in this behalf said defendants allege, and each of them alleges, that after the transfer on or about the 1st day of June, 1928, of the sum of \$430,737.73 by the said Henry Wilson to the said Mary H. Wilson and Francis A. Wilson, the said Henry Wilson continued to the date of his death to own and possess property having a value far in excess of any taxes alleged to be due to plaintiff by the said Henry Wilson, and far in excess of the amount of such taxes and any other debts or obligations due or owing from or by the said Henry Wilson.

5. Said defendants deny, and each of them denies, that money delivered to defendants by Henry Wilson, or any money delivered to defendants or any of them, was received by the said defendants, or any or either of them, impressed with a trust in equity for the benefit of the plaintiff, or that the said defendants, or any or either of them are jointly and severally liable to plaintiff for taxes owing and/or unpaid to plaintiff by Henry Wilson, and said defendants deny, and each of them denies, that when the said Henry Wilson transferred to defendants, Mary H. Wilson and Francis A. Wilson, the sum of \$430,737.73; or that when he transferred any other property during his lifetime he left himself without assets or property out of which the plaintiff could collect taxes due from said Henry Wilson to plaintiff under ordinary available remedies. [11]

Wherefore, the said defendants and each of them pray that plaintiff take nothing by its said suit and that they have such other and further relief, including costs, as may be proper.

JOSEPH C. MEYERSTEIN,
Attorney for defendants, Mary H. Wilson, Winfred
T. Wilson, and Francis A. Wilson.

State of California,
City and County of San Francisco—ss.

Francis A. Wilson, being first duly sworn, deposes and says:

That he is one of the defendants above named, and as such makes this verification for and on behalf of himself and the other defendants named herein, and that he is authorized so to do: that he has read the foregoing answer and that the same is true of his own knowledge, except as to those matters therein stated on information and belief, and that as to those matters he believes it to be true.

FRANCIS A. WILSON.

Subscribed and sworn to before me this 10th day of March, 1936.

[Seal] BERTHA REESE ADLER,
Notary Public in and for the City and County of
San Francisco, State of California.

My Commission expires May 27, 1938.

Service of the within answer by copy admitted this 10 day of March, 1936.

H. H. McPIKE,
Attorney for

[Endorsed]: Filed Mar. 10, 1936. [12]

[Title of District Court and Cause.]

PROPOSED AMENDMENTS AND ADDITIONS
OF DEFENDANTS TO FINDINGS OF
FACT AND CONCLUSIONS OF LAW PRO-
POSED BY PLAINTIFF.

Defendants propose the following amendments and additions to the proposed Findings of Fact and Conclusions of Law proposed by plaintiff:

I.

Defendants propose that there be interpolated after the word "jury" in line 25 of page 1 of plaintiff's proposed findings of fact and conclusions of law, the following:

"upon the bill of complaint of plaintiff and the answer of defendants".

II.

Defendants except to that portion of plaintiff's [13] proposed Finding No. I, reading as follows:

"The circumstances attending the transfer show that the account was transferred in contemplation of death."

on the ground that it is a Conclusion of Law, not a Finding of Fact, and on the further ground that there was no such issue made by the Bill and Answer, and on the further ground that there was no evidence to support the same, and defendants propose that in lieu thereof there be inserted the following:

“But he did not know that death was imminent and expected to live for a considerable period thereafter and the reason that he gave for making the transfer was because half of the money belonged to the defendant, Mary H. Wilson, as community property, and she had started out without anything and had worked hard and saved for many years, and it was her money, and as to the balance he wanted to give it to the defendants, Mary H. Wilson, Francis A. Wilson and Winfred T. Wilson.”

III.

Defendants except to that portion of Finding No. II lines 4 and 5 of page 3 of plaintiff's proposed Findings of Fact reading as follows:

“which had been assessed or otherwise adjudicated.”

and propose that the same be deleted on the ground that there is no evidence to support the same, and on the further ground that it is contrary to the evidence. [14]

IV.

Defendants except to that portion in Finding No. II in line 30, page 3, and line 1 of page 4 of plaintiff's proposed Findings reading as follows:

“The expenses of his funeral and interment amounted to \$4,042.15.”

and that the same be deleted upon the ground that the same did not constitute debts of Henry Wilson at the date of the transfer as set forth in plaintiff's proposed Finding No. I.

V.

Defendants except to that portion of plaintiff's proposed Finding No. II, lines 6 and 7 of page 3 of said proposed Findings reading as follows:

“and were paid by the defendants after Henry Wilson's death out of said bank account.”

and propose that there be inserted in lieu thereof the following:

“and were paid by Mary H. Wilson.”

on the ground that there is no evidence to support the finding as proposed by plaintiff and the same is contrary to the evidence.

VI.

Defendants except to that portion of plaintiff's proposed Finding No. III, lines 6, 7, 8 and 9 page 4 of said proposed Findings reading as follows:

“Transfer of said bank account by Henry Wilson to the defendants Mary H. and Francis A. Wilson was made in the privacy of their own home and was not a matter of public knowledge.”

and propose that there be substituted therefor the following: [15]

“Transfer of said bank account by Henry Wilson to the defendants, Mary H. and Francis A. Wilson was made at the main office of the San Francisco Bank in San Francisco, California, and was not a matter of public knowledge.”

on the ground that there is no evidence to sustain the finding as proposed by plaintiff, and the same is contrary to the evidence.

VII.

Defendants except to the portion of plaintiff's proposed Finding No. IV on lines 15 to 17 of page 4 of said proposed Findings reading as follows:

“The only asset in which Henry Wilson had any interest following his transfer of said bank account was an interest in his home located in Piedmont, California.”

and propose that there be substituted therefor the following:

Following the transfer of said bank account Henry Wilson still had and owned an interest in certain real property located in Piedmont, California, occupied as a residence by himself and wife, and the said Henry Wilson at the time of said transfer and up to the date of his death had a drawing account and was drawing a salary of \$12,000.00 per annum from Wilson Bros. and Company, a corporation, for which he acted in an advisory capacity.”

upon the ground that the said Findings as proposed by plaintiff is not supported by the evidence and is contrary thereto.

VIII.

Defendants except to that portion of plaintiff's proposed [16] Finding No. IV on lines 18 to 21 on

page 4 of said proposed Findings reading as follows:

“This home had been acquired by deed some years previously and was held by the defendant Mary H. Wilson and the deceased, Henry Wilson as joint tenants with the right of survivorship.”

and propose that there be inserted in lieu thereof the following:

“The said property located in Piedmont, California, had been acquired with community funds by deed on the 3rd day of October, 1922, which vested title thereto in the defendant, Mary H. Wilson, and the deceased, Henry Wilson, as joint tenants with the right of survivorship.”

on the ground that the evidence conclusively shows that the said property was community property of the defendant, Mary H. Wilson, and the deceased, Henry Wilson.

IX.

The defendants except to that portion of plaintiff's Finding No. IV on lines 22 to 24 on page 4 of said proposed Findings reading as follows:

“The fair market value of the interest of one of the joint tenants did not equal one-half of the fair market value of the residence.”

on the ground that there is no evidence whatsoever to support said finding.

X.

Defendants except to that portion of plaintiff's proposed Finding of Fact No. IV on lines 24 to 27, page 4 of [17] said proposed Findings reading as follows:

“The sum total of the debts of said Henry Wilson at the time of his transfer of said bank account exceeded the fair market value of his interest as joint tenant in said residence.”

and defendants propose that there be inserted in lieu thereof the following:

“The sum total of the debts of the said Henry Wilson at the time of his transfer of said bank account was \$20,160.76.”

on the ground that there was no evidence whatsoever to support the said Finding and that the said Finding is contrary to the evidence.

XI.

Defendants propose an additional Finding of Fact as follows:

“Each and all of the defendants are and were at the time of the commencement of this suit citizens of the State of California and of the United States of America, residing at Piedmont in the State of California, and within the Northern District of California.”

XII.

The defendants propose an additional Finding of Fact as follows:

“At or prior to the time of the transfer of the bank account as found in Finding of Fact No. I, there was no understanding or agreement between the defendant, Henry Wilson, and the defendants or any or either of them that his debts should or would be paid [18] out of the money so transferred.”

CONCLUSIONS OF LAW.

I.

Defendants except to plaintiff's proposed Conclusion of Law (1) and propose as a substitute therefor the following:

“That the transfer of the bank account of the said Henry Wilson in the San Francisco Bank amounting to \$430,737.73 was not fraudulent as to his creditors and the said Henry Wilson was not rendered insolvent by said transfer.”

II.

Defendants except to plaintiff's proposed Conclusion of Law (2) and the whole thereof, and propose that the same be stricken.

III.

Defendants except to plaintiff's proposed Conclusion of Law (3) and the whole thereof, and propose that the same be stricken.

IV.

Defendants except to the order for the entry of a joint and several judgment with costs against each

of the defendants, and propose that the same be stricken and that there be substituted therefor an order for the entry of judgment in favor of the defendants.

(Signed) JOSEPH C. MEYERSTEIN,
Attorney for Defendants.

Exceptions overruled. Proposed Amendments and Additions denied. Apr. 8, '38.

A. F. ST. SURE,
D. J.

[Endorsed]: Lodged Apr. 7, 1938. [19]

[Title of District Court and Cause.]

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

The above-entitled cause came regularly on for hearing before this Court, sitting without a jury, Esther B. Phillips, Assistant United States Attorney for the Northern District of California, appearing for plaintiff, and Joseph C. Meyerstein, appearing for the defendants, and oral and documentary evidence having been introduced in behalf of the respective parties and the case having been submitted to the Court for his determination, and the Court [20] having considered the evidence in the case and the arguments of counsel, now makes the following

FINDINGS OF FACT

I.

Henry Wilson died on June 5, 1928, being at the time of his death a resident of the City of Piedmont, State of California. On June 1, 1928, he transferred to his wife, the defendant Mary H. Wilson, and to his son Francis A. Wilson, the whole of a savings account which he then had in the Main Office of "The San Francisco Bank," San Francisco, California. The savings account thus transferred amounted to \$427,649.17, with interest amounting to \$3,088.56, or a total of \$430,737.73. At the time such account was transferred, Henry Wilson was confined to his bed and under medical and nursing care. He was 79½ years old. The circumstances attending the transfer show that the account was transferred in contemplation of death. After his death, his wife and son paid the expenses of his last illness, funeral and some of his other debts out of the account so transferred. They made one gift to charity out of it, pursuant to the directions of the decedent, and divided the balance in the proportion of two-thirds to the defendant Mary H. Wilson, and one-sixth each to the defendants Francis A. and Winfred T. Wilson. The net amount received by the defendant Mary A. Wilson out of the bank account so transferred amounted to \$270,727.68, and the amount received by each of the defendants, Francis A. and Winfred T. Wilson was \$67,681.92. They did not pay any part of the claims of the United States which were the subject of the complaint herein. [21]

II.

On June 1, 1928, when said savings account was transferred, Henry Wilson owed income taxes to the United States for the years 1918-1924, inclusive, which had been assessed or otherwise adjudicated. These tax debts amounted to \$13,101.01, and were paid by the defendants after Henry Wilson's death out of said bank account. He was also a party to litigation then pending before the United States Board of Tax Appeals involving his income tax liability for the years 1918 and 1919. He had received a deficiency notice from the Commissioner of Internal Revenue on September 4, 1925, notifying him of an additional assessment in the sum of \$6,591.52 for the year 1918, and an additional assessment for the year 1919 in the sum of \$2,596.80. He took an appeal on October 26, 1925, to the Board of Tax Appeals. The case was thereafter tried, and at the time of his death, was under submission to the Board of Tax Appeals. On November 6, 1928, the order of the Board was entered, fixing a deficiency tax assessment as follows:

For 1918	Principal	\$4,006.61
	Interest	775.74
For 1919	Principal	\$1,725.39
	Interest	334.06

No appeal was taken from this determination of taxes. On May 18, 1929, said determination became final and assessments were duly made, in the sums of \$4,782.35 for the year 1918, and \$2,059.45 for the year 1919.

At the time of the transfer on June 1, 1928, Henry Wilson owed miscellaneous debts created in relation to his last illness amounting approximately to \$361.25. The [22] expenses of his funeral and internment amounted to \$4,042.15. He owed personal income taxes to the United States for the years 1921-1924 in the sum of \$13,101.01, and taxes for the years 1918 and 1919, as hereinabove stated.

III.

Transfer of said bank account by Henry Wilson to the defendants Mary H. and Francis A. Wilson was made in the privacy of their own home and was not a matter of public knowledge. The Commissioner of Internal Revenue had no information upon it. He did not make a jeopardy assessment of the income taxes for the year 1918 and 1919, which were then pending in the Board of Tax Appeals.

IV.

The only asset in which Henry Wilson had any interest following his transfer of said bank account was an interest in his home located in Piedmont, California. This home had been acquired by deed some years previously and was held by the defendant Mary H. Wilson and the deceased, Henry Wilson as joint tenants with the right of survivorship. The fair market value of said residence in its entirety was \$45,000.00. The fair market value of the interest of one of the joint tenants did not equal one-half of the fair market value of the residence. The sum total of the debts of said Henry

Wilson at the time of his transfer of said bank account exceeded the fair market value of his interest as joint tenant in said residence.

From the foregoing findings of fact, the court [23] makes the following

CONCLUSIONS OF LAW

(1) That the transfer of the bank account of the said Henry Wilson in "The San Francisco Bank," amounting to \$430,737.73 was fraudulent as to his creditors, and the said Henry Wilson was rendered insolvent by said transfer.

(2) The money so received by each of the defendants, Mary H., Francis A. and Winfred T. Wilson was received by each of them impressed with a trust for the benefit of creditors of the deceased Henry Wilson, and the money so received by each of them constituted a trust fund for the payment of income taxes due and owing to the United States by the said Henry Wilson for the years 1918 and 1919 in the following amounts:

For 1918	\$4,782.35, and
for 1919	\$2,059.45,

with interest thereon as allowed by law.

(3) That each of the defendants is accountable to this court for said trust fund so received by each of them for the payment of the claims in suit.

Let a joint and several judgment be entered accordingly, with costs against each of these defendants.

A. F. ST. SURE
United States District Judge

Service of the within findings of fact and conclusions of law by copy is admitted this 4th day of April, 1938.

JOSEPH C. MEYERSTEIN

Attorney for Defendants

[Endorsed]: Filed Apr. 8, 1938. [24]

In the Southern Division of the United States
District Court for the Northern District of
California

Equity No. 3812-S

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MARY H. WILSON, FRANCIS A. WILSON,
and WINFRED T. WILSON,

Defendants.

DECREE

The above entitled cause came regularly on for trial on August 26, 1937, the plaintiff being represented by Esther D. Phillips, Assistant United States Attorney for the Northern District of California, and the defendants appearing by Joseph C. Meyerstein. Evidence oral and documentary having been introduced, and the cause having been submitted on the arguments of counsel and the Court having made his Findings of Fact and Conclusions of Law,

It is hereby ordered, adjudged and decreed that money transferred to these defendants by the deceased, Henry [25] Wilson, in the manner and under the circumstances previously found by the Court, constituted a trust fund for the payment of debts owed by said Henry Wilson, including debts owed to the United States on account of tax liabilities, and that the defendants, the transferees of said money, are accountable to this court for the money so distributed to each of them; that the money distributed to each of the defendants exceeded the amount owed to the United States, and that each of them is liable in full for said debts owed to the United States.

It is further ordered, adjudged and decreed that the plaintiff do have and recover against each of the above named defendants, principal sums, with interest thereon, as follows:

For 1918 Income Tax Deficiency of the Deceased,

Henry Wilson

Principal amount\$4006.61

Interest thereon to November 6, 1928,
as heretofore fixed by the Board of

Tax Appeals 775.74

For 1919 Income Tax Deficiency of the Deceased,

Henry Wilson

Principal amount\$1725.39

Interest thereon to November 6, 1928,
as heretofore fixed by the U. S.

Board of Tax Appeals..... 334.06

It is further ordered, adjudged and decreed that interest on both of said principal sums shall run from November 6, 1928 until paid, no interest running upon said two interest items of \$775.74 and \$334.06. [26]

It is further ordered, adjudged and decreed that plaintiff do have and recover its costs herein.

Costs taxed at \$60.53.

A. F. ST. SURE

United States District Judge

Service of the within decree by copy admitted this 14 day of April, 1938.

JOSEPH C. MEYERSTEIN

Attorney for Defendants

[Endorsed]: Filed and entered Apr. 21, 1938. Walter B. Maling, Clerk. By B. E. O'Hara, Deputy Clerk. [27]

[Title of District Court and Cause.]

DEFENDANTS' EXCEPTIONS TO FINDINGS
OF FACT, CONCLUSIONS OF LAW, AND
DECREE.

Defendants, Mary H. Wilson, Francis A. Wilson, and Winfred T. Wilson, and each of them, except to the Findings of Fact, Conclusions of Law, and Decree as follows:

EXCEPTIONS TO FINDINGS OF FACT.

I.

Defendants except to that portion of Finding No. 1, reading as follows:

“The circumstances attending the transfer shows that the account was transferred in contemplation of death.”

on the ground that it is a Conclusion of Law, not a Finding of Fact, and on the further ground that there was no such issue [28] made by the Bill and Answer, and on the further ground that there was no evidence to support the same.

II.

Defendants except to the failure of the Court to find that at the time of the transfer Henry Wilson did not know that death was imminent and expected to live for a considerable period thereafter, and the reason that he gave for making the transfer was because half of the money belonged to the defendant, Mary H. Wilson, as community property, and she had started out without anything and had worked hard and saved for many years, and it was her money, and as to the balance he wanted to give it to the defendants, Mary H. Wilson, Francis A. Wilson and Winfred T. Wilson: on the ground that it was material to the issues of this suit and fully supported by the evidence, with no evidence to the contrary.

III.

Defendants except to that portion of Finding No. II lines 4 and 5 on page 3 of the Findings of Fact reading as follows:

“which had been assessed or otherwise adjudicated.”

on the ground that there is no evidence to support the same, and on the further ground that it is contrary to the evidence.

IV.

Defendants except to that portion of Finding No. II in line 30, page 3, and line 1 of page 4 of the Findings reading as follows:

“The expenses of his funeral and interment amounted to \$4,042.15.” [29]

upon the ground that the same did not constitute debts of Henry Wilson at the date of the transfer as set forth in Finding No. 1.

V.

Defendants except to that portion of Finding No. II, lines 6 and 7 of page 3 of said Findings reading as follows:

“and were paid by the defendants after Henry Wilson’s death out of said bank account.”

on the ground that there is no evidence to support the same and the same is contrary to the evidence.

VI.

Defendants except to that portion of Finding No. III, lines 6, 7, 8 and 9 of page 4 of said Findings reading as follows

“Transfer of said bank account by Henry Wilson to the defendants Mary H. and Francis A. Wilson was made in the privacy of their own home and was not a matter of public knowledge.”

on the ground that there is no evidence to sustain the same, and the same is contrary to the evidence.

VII.

Defendants except to the failure of the Court to find that following the transfer of the bank account transferred by Henry Wilson on June 1, 1928, Henry Wilson still had and owned an interest in certain real property located in Piedmont, California, occupied as a residence by himself and wife, which had been acquired with community funds by deed on the 3rd day of October, 1922, which vested title thereto in the defendant, Mary H. Wilson, and the said Henry Wilson as joint tenants with [30] the right of survivorship, on the ground that the said facts are material to the issues of the case and sustained by the evidence, and with no evidence to the contrary.

VIII.

Defendants except to the failure of the Court to find that up to the date of the death of the said Henry Wilson, he said Henry Wilson had a drawing account and was drawing a salary of \$12,000.00 per annum from Wilson Bros. Co., a corporation, for which he acted in an advisory capacity, upon

the ground that the said facts are material to the issues of this case and fully supported by the evidence, and with no evidence to the contrary.

IX.

Defendants except to that portion of Finding No. IV on lines 22 to 24 of page 4 of said Findings reading as follows

“The fair market value of the interest of one of the joint tenants did not equal one-half of the fair market value of the residence.”

on the ground that there is no evidence whatsoever to support said finding.

X

Defendants except to that portion of Finding No. IV on lines 24 to 27, page 4 of said Findings reading as follows:

“The sum total of the debts of said Henry Wilson at the time of his transfer of said bank account exceeded the fair market value of his interest as joint tenant in said residence.”

on the ground that there was no evidence whatsoever to support the said Finding, and that the said Finding is contrary to the [31] evidence.

XI.

Defendants except to the failure of the Court to find that the sum total of the debts of the said Henry Wilson at the time of his transfer of said bank account was \$20,160.76, on the ground that the said

facts are material to the issues of this case and fully supported by the evidence, and with no evidence to the contrary.

XII.

Defendants except to the failure of the Court to find that each and all of the defendants are and were at the time of the commencement of this suit citizens of the State of California and of the United States of America, residing at Piedmont, in the State of California, and within the Northern District of California, on the ground that said finding is material to the issues of this case and fully supported by the evidence and with no evidence to the contrary.

XIII.

Defendants except to the failure of the Court to find that at or prior to the time of the transfer of the bank account, as found in Finding of Fact No. I, there was no understanding or agreement between the deceased, Henry Wilson, and the defendants or any or either of them that his debts should or would be paid out of the money so transferred, on the ground that the said facts are material to the issues of this case and fully supported by the evidence, and with no evidence to the contrary. [32]

EXCEPTIONS TO CONCLUSIONS OF LAW.

I.

Defendants except to the Conclusion of Law that the transfer of the bank account of the said Henry Wilson in The San Francisco Bank amounting to \$430,737.73, was fraudulent as to his creditors and

that Henry Wilson was rendered insolvent by said transfer, on the ground that neither the facts found nor the evidence sustains the same, the same is contrary to the evidence, and there is no evidence whatsoever to sustain the same.

II.

Defendants except to Conclusion of Law (2) and the whole thereof, on the ground that neither the facts found nor the evidence sustains the same, the same is contrary to the evidence, and there is no evidence whatsoever to sustain the same.

III.

Defendants except to Conclusion of Law (3) and the whole thereof, on the ground that neither the facts found nor the evidence sustains the same, the same is contrary to the evidence, and there is no evidence whatsoever to sustain the same.

IV.

Defendants except to the failure of the Court to deny plaintiff's motion to amend its Bill of Complaint, or to rule thereon.

V.

Defendants except to the denial of defendants' Motion to Dismiss the plaintiff's Bill of Complaint.

[33]

EXCEPTIONS TO DECREE.

I.

Defendants except to that portion of the Decree which states that the money transferred to the de-

fendants by the deceased Henry Wilson, in the manner and under the circumstances found by the Court constitute a trust fund for the payment of debts owed by said Henry Wilson, including debts owing to the United States on account of tax liabilities.

II.

Defendants except to that portion of the decree ordering, adjudging and decreeing that plaintiff recover of the above-named defendants the amounts set forth in said Decree or any amounts.

III.

That defendants except to that portion of the decree requiring payment of costs.

Dated this 26th day of April, 1938.

JOSEPH C. MEYERSTEIN,

Attorney for Defendants.

Receipt of a copy of the within exceptions to findings of fact, conclusions of law and decree is hereby acknowledged this 27th day of April, 1938.

FRANK J. HENNESSY,

Attorney for Plaintiff.

[Endorsed]: Filed Apr. 27, 1938. [34]

[Title of District Court and Cause.]

NOTICE OF ENTRY OF DECREE

To Defendants above named and to Joseph Meyerstein, Esq., their Attorney:

You, and each of you, will please take notice that the decree herein was entered on April 21, 1938.

(signed) FRANK J. HENNESSY

United States Attorney

(signed) By ESTHER B. PHILLIPS

Assistant United States Attorney

Service of the within notice of entry of decree is admitted by copy this 21st day of April, 1938.

JOSEPH C. MEYERSTEIN

Attorney for Defendants

[Endorsed]: Filed Apr. 23, 1938. [35]

[Title of District Court and Cause.]

STIPULATION EXTENDING TERM FOR
PURPOSE OF SETTLING BILL OF EX-
CEPTIONS, ETC.

It is hereby stipulated that the pending term of this Court may by order of said Court be extended and enlarged for a period of sixty (60) days for the purpose of enabling plaintiff and defendants to prepare to the Court for settling Bills of Exceptions, serving and filing notices of appeal, and for taking such other and further steps as may be ap-

propriate and requisite as the basis for an appeal or appeals from the decree and judgment of this Court heretofore made and entered herein.

Dated: May 26, 1938.

FRANK J. HENNESSY

By ESTHER B. PHILLIPS

Attorney for Plaintiff

JOSEPH C. MEYERSTEIN

Attorney for Defendants [36]

So ordered and control over said case is hereby reserved and the term accordingly extended for a period of sixty (60) days from date.

Dated: May 26, 1938.

A. F. ST. SURE

District Judge

[Endorsed]: Filed May 26, 1938. [37]

[Title of District Court and Cause.]

STIPULATION IN RE STATEMENT
OF EVIDENCE

It is hereby stipulated, that the attached Statement of Evidence shall constitute the Statement of Evidence to be used on appeal to the Circuit Court of Appeals for the Ninth Circuit and that an order may be made by the Court approving the same.

Dated: May 26, 1938.

FRANK J. HENNESSY

By ESTHER B. PHILLIPS

Attorney for Plaintiff

JOSEPH C. MEYERSTEIN

Attorney for Defendants

Dated May 26, 1938, so ordered:

A. F. ST. SURE

District Judge [38]

[Title of District Court and Cause.]

DEFENDANTS' AND APPELLANTS'
STATEMENT OF THE EVIDENCE

Be it remembered that the above-entitled cause came on regularly for trial upon the issues made by the Bill of Complaint and the Answer and defenses of the defendants on the 26th and 28th days of August, 1937; that defendants lodge this their statement of the evidence in said cause.

Before Hon. A. F. ST. SURE, Judge

Counsel Appearing:

For Plaintiff:

Miss ESTHER B. PHILLIPS

For Defendants:

JOSEPH C. MEYERSTEIN, Esq. [39]

Plaintiff's attorney, Miss Phillips, thereupon made the opening statement as follows:

“The United States sued Francis Wilson, Mary Wilson and Winfred Wilson as trustees

for money received by them in June, approximately, of 1928. The United States sues them on the theory that they are obliged to pay out of the money so received a tax debt due from Henry Wilson, the husband of Mary Wilson, and the father of the other two defendants. The situation is this: On June 5, 1928, Mr. Wilson died. He was then a resident of Piedmont. On June 1st, four days immediately preceding his death, he transferred to his wife, Mary Wilson, and his son, Francis Wilson, money in an account in one of the United States Banks aggregating \$430,000. He had at that time in addition to the money in his account, a home in Piedmont owned with his wife, Mary Wilson. The terms of the ownership can be shown by a deed which will be offered in evidence. The transfer of the property was undoubtedly in contemplation of death. At that time the situation, so far as the United States is concerned, was this: previously, over some period of years, there had been a dispute between Henry Wilson and the Government regarding his tax liability for the year 1918 and the year 1919. The amount for the two years in controversy aggregated slightly under \$7000. The claim for 1918, as finally adjudicated, was \$4782.35 and for 1919 it was \$2059.45; as I say, just under \$6800. Mr. Wilson, prior to his death, had taken an appeal to the United States Board of Tax Appeals and the appeal was pending at the time

of his death. As Your Honor knows, when a taxpayer petitions the Board of Tax Appeals for an adjudication of his liability, the [40] Government can proceed no further with that tax until the litigation with the Board of Tax Appeals is concluded. It is subject to litigation on the merits and the Government is in the position of litigating an unadjudicated claim. It is distinctly a claim, because the Commissioner has given the notice of the deficiency, and the taxpayer has then just to petition the Board of Tax Appeals for a decision thereon.

“In the particular case, the decision was made by the Board of Tax Appeals in November, I think. The date is alleged in the complaint as of 1928 and the amounts actually decided by the Board of Tax Appeals as the amounts due were those that I have stated a moment or two ago. Likewise, even after the Board of Tax Appeals has rendered its decision on a case, its finding as a tax liability, the Government can still not actually proceed to assess the tax, it cannot file a lien in the taxpayer’s account for the amount due, the reason being that the taxpayer has six months in which to take his appeal to the Circuit Court of Appeals. In this situation, on June 1, 1928, Mr. Wilson, when he conveyed to his family this large amount of property, there was a tax claim then being litigated which was adjudicated in November of 1928, and went to an

assessment in the time required by law, the following May, I believe it was. No appeal has ever been taken, and the tax then finally found due in the courts for the amounts I just stated. Those amounts have never been paid. The Government sues the widow and the two sons following the principle familiar in the case of *Leighton v. United States*, 61 Fed.(2d) 530, and the decision of the Circuit Court of this Circuit that when corporate trustees or other persons receive the property without [41] consideration by the taxpayer they receive it subject to a trust for the payment of creditors. The United States is a creditor, and justly a creditor of the decedent, the donor of this property to the wife and children of the decedent.

“We contend, and I would expect to show, that there was a trust here on the property received by the widow and the two children of the deceased, Henry Wilson, operating by law, and also a trust in fact; that is, I would expect to be able to show in cross-examination that there was, in fact, a trust impressed upon this property by the decedent prior to his death, and if those facts can be proved, as I expect to prove them, it would follow as a matter of law that the three then would be held accountable to the United States, and are bound to pay the United States money due it out of the funds so received by them. I have a number of documents that I wish to offer in evidence

and I would then want to call one of the defendants, Mr. Francis Wilson, whom I believe to be one of the three defendants and the manager here of his father's property, and the most conversant with the facts. I would want to call him as my witness, as an adverse witness, but as my witness. Does counsel wish to make a statement at this point, or shall I offer my evidence?"

Defendants' attorney thereupon moved to dismiss the bill on grounds stated as follows:

Mr. Meyerstein: "The bill alleges the incident of the tax and there was this controverted proceeding before the Board of Tax Appeals, which eventuated in the final order of the Board in November, 1928. It alleges that on or about the 1st [42] of June, 1928, the taxpayer, himself, Henry Wilson, transferred this fund in the bank, consisting of \$400,000.00 odd, to his wife and one of his sons; it further alleges that this transfer was a transfer of all the property which he then owned, and that by reason of the fact that he had transferred all of his property it left him without any property and insolvent, and without means to pay this tax which was subsequently determined to be due. That was the gravamen and the actual averments of the bill.

"Of course, if that were true, I am willing to admit that under the authorities the Government could follow through into the funds in the

hands of the transferees. It could have done it either by a transferee assessment under the Income Tax Statute, itself, or it could do it by a plenary suit in equity, which is the remedy followed here, because no transferee assessment was ordered made.

“Now, counsel states that she expects to prove that at the time this transfer was made the man had other property which he owned in tenancy with his wife, and that she expects to prove an express trust, or some other set of circumstances other than the fact as alleged in the bill, that this transfer which she is assuming here was a transfer of all of his assets left him insolvent. I may add just parenthetically that the statement that the Government had not yet made an assessment at the date of this transfer because of the pendency of the proceedings before the Board of Tax Appeals is only qualifiedly true, because while it is true that the Commissioner of Internal Revenue, as a general rule, cannot make an assessment pending proceedings in the Board of Tax Appeals, there is one [43] exception to that rule, and that is that he can make a jeopardy assessment at any time, and it is also the rule, as established by decisions of the Supreme Court of the United States, that the Government can maintain a suit of this character without any assessment. However, my position now is that there is a variance between the statement of

facts which counsel for the Government now attempts to prove and the averments of the bill, and on the strength of that variance I think it is appropriate for these defendants to move to dismiss the bill, because counsel is undertaking to prove a situation which possibly might entitle the Government to relief, but it would be under a statement of circumstances entirely different from the circumstances as pictured in the bill which is on file, and I submit that motion.”

Thereupon, after argument, the Court reserved its ruling on the motion as follows:

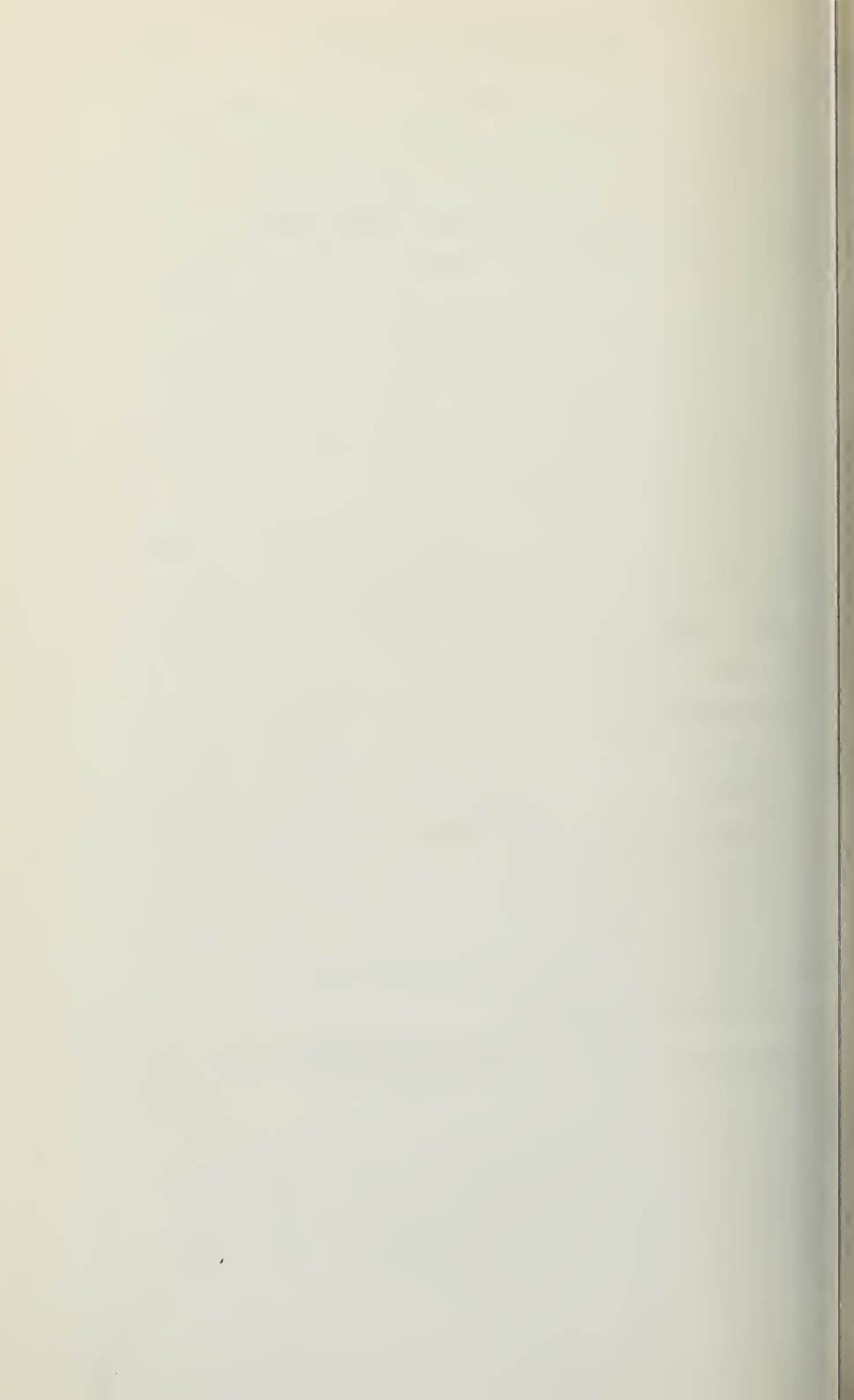
The Court: Very well, I will reserve my ruling and you may proceed.

Thereupon there were offered by plaintiff and received in evidence “U. S. Exhibits 1 and 2”.

Exhibit No. 1 is an estate tax return of Henry Wilson, deceased, of Piedmont, California, in the form as prescribed by the applicable Federal Estate Tax Law and Regulations (Form 706), made under the authority of Section 3176 of the Revised Statutes of the United States, dated May 17, 1930, and filed May 1st, 1920.

Exhibit No. 2 is in words and figures as follows:

[44]



CLAIM

TO BE FILED WITH THE COLLECTOR WHERE ASSESSMENT WAS MADE OR TAX PAID

Collector will indicate in the block below the kind of claim filed, and fill in the certificate on reverse side.

- REFUND OF TAX ILLEGALLY COLLECTED.
- REFUND OF AMOUNT PAID FOR STAMPS UNUSED, OR USED IN ERROR OR EXCESS.
- ABATEMENT OF TAX ASSESSED (not applicable to estate or income taxes)

COLLECTOR'S STAMP
(Date received)
RECEIVED
NOV 1 1930
INTERNAL REVENUE SERVICE

RECEIVED FILED
NOV 21 1930
S. F. CALIF.

STATE OF California
COUNTY OF Alameda

ss:

Name of taxpayer or purchaser of stamps Mary H. Wilson, Winfred T. Wilson and Francis A. Wilson
Business address 1312 Russ Building, San Francisco, California
(Street) (City) (State)
Residence 22 Seaview Avenue, Piedmont, Alameda County, California

I, the deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer and that the facts given below are true and complete:

District in which return (if any) was filed San Francisco
Period (if for income tax, make separate form for each taxable year) from _____, 19____, to _____
Character of assessment or tax Federal estate tax
Amount of assessment, \$ 12,072.84 int.; dates of payment December 20, 1930
The stamps were purchased from the Government
Amount to be refunded 12,072.84, with interest from June 5, 1929 \$
Amount to be abated (not applicable to income or estate taxes) \$
The time within which this claim may be legally filed expires, under Section 315 of the Revenue Act of 1926 on December 20, 1933

The deponent verily believes that this claim should be allowed for the following reasons:

Amount of tax paid \$12,427.82
Computation of tax as set forth on sheet attached hereto 354.98
Amount to be refunded \$12,072.84
(Plus interest from date of payment)

Signed Mary H. Wilson
Signed Winfred T. Wilson
Signed Francis A. Wilson

(Attach letter also sheets if space is not sufficient)

Subscribed and sworn to and subscribed before me this 20 day of December, 1932

J. P. Shaw
(Signature of officer administering oath)

Signed _____
(Title)

(SEE INSTRUCTIONS ON REVERSE SIDE)

7

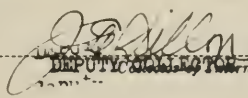
CERTIFICATE

certify that an examination of the records of this office shows the following facts as to the assessment of the tax:

Character of assessment and period covered	List	Year	Month	ACCOUNT NO. OR		Amount assessed	PAID, ABATED, OR CREDITED	
				Page	Line		Date	Amount
Efficiency	23A	1930	Oct.	307	9	\$ 11,405 97	12-20-30	\$ 11,405 97
Interest	23A	1930	Oct.	307	9	1,021 85	12-20-30	1,021 85
Total,						\$	Total,	\$

certify that the records of this office show the following facts as to the purchase of stamps:

TO WHOM SOLD OR ISSUED	Kind	Number	Denomination	Date of sale or issue	Amount	If special tax stamp	
						Serial number	Face value
					\$		


 DEPUTY COMMISSIONER IN CHARGE

FIRST-CALIF
 (District)

COMMITTEE ON CLAIMS

Examined by--
 Approved by--
 Chief of Division.

Amount claimed \$

Amount allowed \$

Amount rejected \$

INSTRUCTIONS

The claim must set forth in detail and under oath each ground upon which it is made, and facts sufficient to apprise the collector of the exact basis thereof.

The claim should be sworn to by the taxpayer, if possible. Whenever it is necessary to have the claim executed by another person, on behalf of the taxpayer, an authenticated copy of the document specifically authorizing such agent or attorney to act on behalf of the taxpayer shall accompany the claim. The oath will be administered without charge by any collector, auditor, or internal revenue agent.

If a return is filed by an individual and a refund claim is thereafter filed by a legal representative of the deceased, certified letters testamentary, letters of administration, or other similar evidence must be annexed to the claim, to show the authority of the executor, administrator, or other fiduciary by whom the claim is filed. If an executor, administrator, guardian, trustee, receiver, or other fiduciary files a return and thereafter refund claim is filed by the same fiduciary, documentary evidence to establish the authority of the fiduciary need not accompany the claim, provided a statement is made on the claim showing that the return was filed by the fiduciary and that the latter is still acting.

Where the taxpayer is a corporation, the claim shall be signed with the corporate name, followed by the signature and official position of the officer having authority to sign for the corporation.

H 2

The assessment was based upon the gross amount of the estate, to wit,
 the sum of.....\$472,649.17
 less the specific exemption of..... 100,000.00

leaving the net amount subject to tax.....\$372,649.17

Petitioners claim the following additional deductions:

1. The community share of Mary H. Wilson, wife of said Henry Wilson, in and to one-half of the monies belonging to said decedent and said Mary H. Wilson, which said share became vested in said Mary H. Wilson by actual transfer, on or about June 1, 1938, prior to the decedent's death:

cash on deposit in The San Francisco Bank, San Francisco, California\$427,649.17
 Accrued interest 3,088.56

Total\$430,737.73

One-half\$215,368.86

2. One-half of the value of real property owned in joint tenancy by said decedent and said Mary H. Wilson and purchased with community funds..... 22,500.00

3. The amount paid to the Fred Finch Orphanage, a charitable institution, of Oakland, California, at the direction of the decedent..... 5,000.00

4. Expenses of last illness: Nurse\$ 87.50
 Cleaning blankets..... 1.20
 Drugs 2.35
 Drugs 20.60
 Dr. Moffatt..... 150.00
 Dr. Taylor 100.00

\$ 361.65

Funeral expenses: Truman Undertaking

Co.\$2,677.50

Mountain View Cemetery Ass'n, lot and interment 991.00

Lettering name on coping 12.00

4,042.15

5. Indebtedness owing by decedent at time of death, to-wit: Additional income tax for years 1921-1924 inclusive, paid after his death.....	15,198.54
1928-9 real property taxes paid City of Piedmont.....	553.50
1928-9 real property taxes paid County of Alameda.....	822.47
6. Specific exemption	100,000.00
	<hr/>
Total deductions	\$363,485.52
Balance estate subject to tax.....	109,163.65
	<hr/>
	\$472,649.17
7. Amount of tax:	\$50,000.00—\$ 500.00
	50,000.00— 1,000.00
	9,163.65— 274.91
	<hr/>
	\$1,744.91
8. Credit for State inheritance taxes	
paid to the State of California	\$4,804.29
Interest	761.82
	<hr/>
	\$5,566.11
Not exceeding 80% of \$1,774.91.....	\$1,419.93
	<hr/>
Balance	\$ 354.98

Thereupon there was offered by plaintiff and received in evidence, "U. S. Exhibit 3", being a certified copy of the deed, in words and figures as follows:

J. S. Blowski
to H. Wilson et al.

This Indenture made this 3rd day of October in the year of Our Lord One Thousand Nine Hundred and Twenty-two between John S. Blowski, a single man, resident of the City of Oakland, County of Alameda, State of California, the party of the first part, and Henry

Wilson and Mary H. Wilson, his wife, residents of the said city of Oakland, County of Alameda, State of California, the parties of the second part.

Witnesseth: That the said party of the first part for and in consideration of the sum of Ten Dollars in lawful money of the United States of America, to him in hand paid by the parties of the second part, at or before the en-sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold and conveyed and by these presents does grant, bargain, sell and convey unto said parties of the second part, as joint tenants and not as tenants in common, all those certain lots, pieces or parcels of land situate, lying and being in the City of Piedmont, County of Alameda, State of California, and bounded and particularly described as follows, to-wit:

Commencing at the Northwestern corner of Lot No. 28 on the Eastern line of Sea View Avenue, as the said lot and avenue are shown upon the map hereinafter referred to; and running thence along the Northern boundary line of said lot No. 28 east 330 feet, thence south $0^{\circ}10'$ east 150 feet; thence west and parallel with the aforesaid northern boundary line of said lot No. 28 330 feet to a point on the aforesaid Eastern line of Sea View Avenue, and thence along the said last named line North $0^{\circ}10'$ West, 150

feet to the point of commencement. Being the westerly 330 feet of said Lot numbered 28 and the northerly 50 feet of the Westerly 330 feet of Lot No. 29, as the said lots are delineated and so designated on that certain map entitled "Map of the Crocker Tract, Piedmont, Alameda County, Cal. 1892", filed January 11, 1892, in the Office of the County Recorder of said Alameda County.

Together with the improvements thereon and the appurtenances thereunto belonging.

To have and to hold, all and singular the above mentioned and described real property and premises, together with the appurtenances, unto the said parties of the second part as joint tenants and not as tenants in common.

Subject to all State, County and Municipal taxes for the fiscal year 1922-1923 which said taxes the parties of the second part assume and agree to pay.

In witness whereof the said party of the first part, [45] has hereunto set his hand and seal the day and year herein first above written.

[Seal] JOHN S. BLOWSKI

State of California,
County of Alameda—ss.

On this 3rd day of October, A. D. One Thousand Nine Hundred and Twenty-two, before me Alice H. Cornwall, a Notary Public in and for said County of Alameda, State of California, residing therein, duly commissioned and

sworn, personally appeared John S. Blowski, a single man, known to *be* to be the person described in and whose name is subscribed to the within instrument and he acknowledged to me that he executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal]

ALICE H. CORNWALL

Notary Public in and for the County of Alameda, State of California.

U. S. I. R. Stamps \$14.50 cancelled.

Recorded at request of Oakland Title Insurance and Guarantee Company at 54 minutes past 11 A.M. October 6, 1922.

G. W. BACON

County Recorder

S/230874 1.30

Compared

by S.H.L.

T.B.C. Doc.D.K.

State of California,
County of Alameda—ss.

G. W. Bacon, County Recorder in and for Alameda County do hereby certify that I have compared the annexed foregoing document with the original record thereof as the same appears in my office in Liber 301 of Official Records, page 125 and that the annexed and foregoing document is a full, true and correct transcript and of the whole of such original records.

Witness my hand and my Official Seal hereunto set this 21st day of April A. D. 1937.

G. W. BACON

County Recorder

By M. J. HENDERSON

Deputy Recorder

C.R.A.C.

Thereupon there was offered by plaintiff and received in evidence "U. S. Exhibits 4 and 5". Exhibit No. 4 is a petition [46] filed in the Superior Court of the State of California, in and for the County of Alameda, filed by the Controller of the State of California, alleging that there was an estate and claiming inheritance taxes due the State of California. Exhibit No. 5 was the verified answer in this proceeding verified by the defendant, Francis Wilson. The two exhibits establish that out of the money transferred by the deceased, Henry Wilson, to Mary Wilson and Francis A. Wilson, Winfred T. Wilson received the sum of \$71,274.86.

Thereupon there was offered by plaintiff and received in evidence "U. S. Exhibit 6". This is an affidavit sworn to by Francis Wilson on October 4th, 1932, and filed in the Bureau of Internal Revenue, in which he gives the date of the death of Henry Wilson, and recites that there has been no administration or probating of the estate of Henry

Wilson, deceased, and further recites the transfer of the money in the San Francisco Bank, and that he, Francis Wilson, had charge of the estate and the property of the decedent during all times since the death of the decedent during all times since the death of the decedent.

Thereupon there was offered by plaintiff and received in evidence "U. S. Exhibit 7". Exhibit 7 is a certificate of overassessment issued by the Commissioner of Internal Revenue responsive to the claim for refund as filed (Exhibit 2), allowing the greater part of the claim because a deduction was allowed on account of estate taxes paid to the State of California.

It is here stipulated by attorneys for all parties that the amount of income taxes actually due, including accrued interest at the date of Henry Wilson's death for the tax years 1921 to 1924 inclusive, but exclusive of any amounts due for the tax years 1918 and 1919, was \$13,102.01. [47]

Thereupon

FRANCIS A. WILSON

one of the defendants, called as a witness for plaintiff, having been first duly sworn, testified as follows:

Direct Examination

By Miss Phillips:

The Witness: I am Francis A. Wilson, one of the defendants in this case. Defendant Winfred T.

(Testimony of Francis A. Wilson.)

Wilson is my brother, and defendant Mary H. Wilson is my mother, my home address is 22 Sea View Avenue, Piedmont. My business address is Russ Building, San Francisco. The address of my brother, Winfred T. Wilson, is the same, and my mother's address is 22 Sea View Avenue, Piedmont. I was in actual charge of the affairs of my father, Henry Wilson, deceased, after his death, and whatever was necessary to be done I did. Most of what was done I did. If there was anything to be attended to that I did not attend to, my brother did. There was no probate or administration of my father's estate. At the date of his death he owned the residence at 22 Sea View Avenue, Piedmont, in joint tenancy with my mother. That was all that he owned. I do not recall other interests of any kind or sort whatever. On June 1, 1928, my father had transferred his bank account in the San Francisco Bank to my mother and myself. I refer to the main office of the San Francisco Bank on California Street. The account was of some \$427,000 principal and accumulated interest of approximately \$3,000 in round figures. At the date of this transfer my father did not know that death was about to come in the course of a very few days. My father had not been ill very long, a matter of some weeks. He had a doctor and a nurse to look after [48] him, he was perfectly conscious up to the time he died, and he felt fairly good, he thought he was going to live for many years. He always expected to

(Testimony of Francis A. Wilson.)

live at least to be a hundred years old, as he often said. One of his grandfathers, I think, lived to be over a hundred, and he always expected to live as long as he did. That was his opinion right along. He was 79 and a half years old at the time. I do not know the exact cause of his death. I cannot give the scientific terms of what the death certificate said. I would say that he died of old age. He was ill, because he went to bed for a while, but the exact cause that the doctor said he died of I really could not say. He was sick at home and at the time of his death had one doctor and a nurse was with him practically all of the time. I would not know the specific cause of his death, I presume he came to the end of his life and he died. Dr. Moffitt of San Francisco was one of the attending physicians. Dr. Taylor was the doctor who attended him at the time of his death. Dr. Moffitt was the consultant, Dr. Moffitt is a specialist, but he is practically retired, and I do not think he had very much to do with it. He is a general diagnostician as I understand it. With reference to the bank account of \$430,000 including accumulated interest, it is not true that my father had been selling property and securities two or three months before his death so as to accumulate this amount. The prevailing rate of interest at the time was 4% and 4½%, I think. I do not think that it is correct that the accumulation of \$3,000 interest on \$437,000 would indicate that the greater part of this amount had been bearing interest in the

(Testimony of Francis A. Wilson.)

bank for a period of less than six months. [49] \$3000 would be less than six months interest at 4% on \$400,000. The signature on Exhibit 2 is my signature. In this claim there are debts owed by my father at the time of his death including expense of last illness, totaling \$361.65. I do not recall who paid these, but they were paid. I presume I did. My mother did not attend to any of this business, I attended to it, I paid them and had receipts for them which were probably put in with the claim. I just paid them, the bills were there and they were paid. I could not say whether my mother or my brother contributed or helped in paying them. I don't remember whether they were paid out of this bank account of my father's. I paid them out of my general funds I would say off-hand. I just paid them out of my general funds. He had no account at that time. As to whether I paid these debts out of the very money that had been transferred, I had the money and it was standing in my name in the bank, but as to the technical aspect I am not prepared to answer. I just paid the debts. The money was transferred to me and my mother by my father, and I handled it in the bank and as the bills came in I paid the bills, but I did not draw any money out of the bank to pay these bills. Ordinarily I drew checks against my account in bank, but it was not this account at the San Francisco Bank, that was not a checking account, that was a savings account. After the money was transferred

(Testimony of Francis A. Wilson.)

to my mother and myself, I turned over part of it to my brother, Winfred Wilson, in due course. I do not recall what particular account I used in paying various debts that my [50] father owed at the time of his death. I paid the bill of the Truman Undertaking Company for \$2,677.50. No money was taken out of the particular account transferred by my father. The bills came in for payment and I paid them. I don't know exactly what occurred with reference to a settlement between my mother and my brother, all I recall is that the debts were paid and that is all I recall in regard to it. That was ten years ago. I do not recall asking any contribution from my mother and brother. It is not necessarily probable that I did. If I go out and pay a thousand dollar debt of my mother's I might ask her for it, I may pay it and forget it. I don't recall it. I do not recall asking my brother to contribute a proportionate share of the various debts my father had left, possibly I did. Additional income taxes for the year 1921 to 1924, paid after my father's death, amounted to \$15,198.54, which was paid by my mother. A check was drawn to her account and charged to her and turned over to the Commissioner of Internal Revenue. That indebtedness was all cleared up. These tax claims of 1921 to 1924, inclusive, that were due to the Government for income taxes were pending for several years, a number of years. I knew that they had not been settled, I was handling them. That claim my mother

(Testimony of Francis A. Wilson.)

paid, the other smaller claims like the nurse and doctor and the undertaking parlor I paid. I do not recall who paid \$991 for a lot in the Mountain View Cemetery Association and internment, but I probably paid it. I am not certain of that. It is possible that the others contributed their proportionate share out of my father's money. Real property taxes paid the City of Piedmont for 1928-1929 amounting to \$555.50 and real property taxes paid the County of Alameda amounting to [51] \$822.47, I do not think were paid at the time of death. My father died on the 5th of June. I think my mother probably paid the taxes. As to how it happened that these various debts were paid for my father, we usually pay our bills, and in due course we pay them. There was no understanding with my father that these debts would be paid. My father was not in the habit of trying to defeat his creditors, it was his reputation that he regularly paid his bills. My father very seldom owed any bills, he usually paid cash when he bought anything, he did not usually have many bills because he usually paid in cash. We paid the debts that are enumerated in Exhibit 2. There was no probate of my father's estate. That meant that Dr. Moffitt and Dr. Taylor and the nurse and all the rest could whistle for their money unless I and my brother and mother should pay them. As to whether my father intended to cheat these people out of this money, I do not know what his intentions were, there was no tacit under-

(Testimony of Francis A. Wilson.)

standing when he transferred this money to me and my mother that these debts would be paid, we just paid them. There was no understanding on his part whatever. These debts were not paid pursuant to an understanding with my father. There was no understanding at all, none whatever. As to whether I knew that my father was willing that these various people should not be paid, I do not know what his thought was. The circumstances under which the transfer was made are he decided to transfer this money so he transferred it. He said half of the money was mother's community property, that she had worked hard and helped to save it, and it was hers, and he transferred it to her. There was nothing in particular that led up to it. He did not send for me and tell me that he wanted to transfer all of his property to me and my [52] mother, he just decided that he was going to transfer it and so the transfer was consummated. What was said at the time was that half of this money belonged to my mother as community property, and she had started out without anything and she had worked hard and saved for many years, and it was her money, and then the balance he said, "I want to give to your brother and your mother and yourself equally." That is all that occurred. My father was in the lumber business from 50 to 60 years, I guess. He never actually retired and was always interested in business, an active partner to the time of his death, more or less. He was not interested in the lumber business at the time of his death except in

(Testimony of Francis A. Wilson.)

so far as he acted as a sort of adviser for Wilson Bros. and Company and drew a salary from the Company. He sold out his lumber interests a number of years before he died, because the business was in rather bad shape, and not very profitable, and more or less trouble was had, the outlook did not seem to be so very good. He did not sell any interest in property a short time before his death. He had a number of other people interested in the business with him, and the conduct of the business was not very harmonious, and it was rather unpleasant on that account, and he determined to get out of the business. Some of his nephews and nieces and other relatives, and I were associated with him in the business and my brother. He operated as a partnership. At the time of his death he had no interest in the lumber business in the shape of a direct ownership. He sold various parts of his interest in the lumber business at different times as far back, I should say, as 1920. Approximately 1920 he began to sell out. He continued to dispose of his interest until I should say around 1925. He had sold out his entire interest in the lumber business in 1925. He had other property besides his interest in the lumber business. He had an [53] interest in steamers, I do not know the exact date he sold his interest in the steamers. My best recollection as to when he converted his property into cash is that in the northern part of the business, they had some lumber and it was sold off in the State of Washington, because

(Testimony of Francis A. Wilson.)

we no longer were in the sawmill business and were not interested in lumber and could not handle it properly, and then after selling that we had what you might call a lumber brokerage and shipping business, and that lumber business was not very good, and it just dwindled down, it was not really a sell-out, it got down to very small proportions because it was impossible to operate and make any money out of it. I was actually engaged in the business with my father and we were down on Market and California Streets in the Lumbermen's Building. We maintained an office there after 1925. Several years after that we moved up into the Russ Building. I don't remember the date. It is impossible for me to state what my father got for his interest in the lumber business. I think that when it finally came to an end there was very little left in it, and he just withdrew from the business and my brother and I continued in the lumber brokerage business, that is, buying and selling lumber. The \$430,000 that was in the Bank was accumulated probably out of the proceeds of the business that was left. It principally came out of the sale of his interest in the business. He had no steamers, in years gone by he had sold them. When he sold the lumber business he bought various securities, and I think the money in the bank did not come directly from the sale of the business, but when these securities came due, and the market in bonds was such that the rate of interest on bonds was

(Testimony of Francis A. Wilson.)

lower than banks paid, any security that he had that became due, rather than buy securities he deposited it in the bank, on account [54] of getting a higher rate of interest. If any securities became due, he collected the money and deposited it in the bank. I would say that he had been doing this for a number of years from whenever this account started. I don't recall the exact date. He was not converting all his property into cash and putting it into the bank. When he sold his interest in the lumber business he invested it in different securities. Then came a time when he sold those securities, or they became due, and he collected the money and deposited it in the bank. It is difficult for me to say in what year he began doing this. Whenever he had a security that became due and he could not invest the money at a higher rate of interest than the bank paid, he deposited it in the bank. I was actively engaged in the business with my father. He kept books but he never kept any books on his personal affairs because they were not of enough magnitude to necessitate that. He would just keep a record of the income he got. He never kept any books on his personal affairs because if he had any money in the bank he knew what he had there. He knew when securities became due the money was deposited in the bank, except sometimes he would ask me "What can I buy for this and get something out of my money," and I would try to find some bond that he could buy, that would give him a decent

(Testimony of Francis A. Wilson.)

yield on it, but the bond interest got so low you could not buy bonds that were safe that would pay you as much as the bank would pay you, and on account of the difference in interest he deposited the money in the bank, waiting for a time when he could buy securities that would pay a higher rate of interest. I have been familiar with the stock market and was familiar with matters of that kind and with investments that could be made. I talked that over with my father [55] and would advise him, tell him what I thought was a good investment or bad investment, that is about all. Sometimes he followed my advice and sometimes he did not. He was a man of independent thought. It was not his idea that he was not going to invest any more money, but he thought he had better not take any chance, and he just would sell his securities, or when they came due he would collect the cash and put the money into the bank. He had a very young outlook on life and he was always looking toward the future. His policy was if he had \$10,000 how could he get the most out of it. If he could buy a good bond and get a 5 per cent. on it he would want to buy the bond. If he could only get 3 per cent. on a secured bond he would put the money in the bank, because he would get 4 per cent. or $4\frac{1}{4}$. The last time he bought any securities was when the interest rates started to go down several years before his death. He did not buy any securities after that time. What he bought was mostly short term stuff, when

(Testimony of Francis A. Wilson.)

they matured he did not buy any more. That all happened approximately five years before he died. If the interest rate went down on bonds and the savings bank interest rate remained about the same. I knew that my father had all of his cash in the bank and that was all of his property. I was born in 1890. My brother is the same age and we are twins. My mother is almost eighty years old, she will be in a few months. She has arthritis, she gets nervous, and things upset her. My father did not suffer from any of those things, he was in pretty good health. He was a very active man and was always accustomed to be active and he could not be idle very much, he liked to be busy. I lived at the home place, my brother and I, and I did at the time my father died. The occasion for sending for Dr. Moffitt [56] was I just thought my father should be looked over, he was getting old, and it is always advisable to do when a man gets old, to have the doctor examine him, and if anything was the matter with him to try to correct it. I really don't know Dr. Taylor. I know Dr. Moffitt. He has been semi-retired for years, he is active one month and not active the next. My father went over to see him at his office, because Moffitt has a good reputation and I said, "You had better have somebody examine you once in a while and see how you are," and he took my advice and did that. Dr. Moffitt was in the case first and he turned it over to Dr. Taylor as a matter of convenience. Dr. Moffitt lived in San

(Testimony of Francis A. Wilson.)

Francisco and Dr. Taylor lived in Oakland, and it was more convenient for Dr. Taylor to take charge of the case. I saw my father right along. When he was taken to bed he never complained much about anything. He did not feel the way he ought to feel, he did not feel right. He was a man who was really never sick. I was rather surprised when he took to his bed. I did not talk it over with him particularly. I was very close to him. I called him "Father". He would say he did not feel very well, he did not feel right, and I did not discuss his sickness with him very much, I discussed what we were going to do, he was always interested in something we were going to do. I did not like to have him think of the fact that he was sick in bed, I talked over this and that and the other. I talked to him about his sickness, and that he was not feeling well, and was very sorry, and it was too bad a man could not always feel like he had in his youth, and that sort of thing. My mother was in an automobile accident just shortly before father's death and it kept me pretty busy. She was confined to her bed at the same time. Whether he [57] seemed to sink gradually from the time he took to bed, it is pretty hard to say, his mind was just as clear as mine is now. It was hard to keep him in bed, he wanted to get up. I talked to the doctor and the doctor said the best thing to do was to stay in bed. As to what was the matter with him, I don't know the medical terms, but he seemed to think it was old

(Testimony of Francis A. Wilson.)

age. I presume probably his heart was bothering him or something. Dr. Taylor said to keep him quiet. Dr. Moffitt said he might die and he might live five years. He said "You can't tell a thing. No human being can tell what is going to happen to another human being." My father died in the night time, I was there when he died. I was with him right there in the house. I spent more or less of my time there. In our corporation we keep books, I do not keep books in my personal affairs. I did not keep any books on the payments I made for my father's estate. The name of my corporation is Wilson Bros. & Co. My brother does not keep any books of his business affairs. My mother, brother and I had not all talked over the idea of transferring this money that was in the bank. My brother was not living at home at the time. He was married and away from home and my mother isn't interested in financial affairs and never bothered with it. I was conversant with them. The transfer was just an ordinary bank affair where the account was drawn out from the depositor's name and then redeposited in the name of the other party. The bank had certain requirements, and whatever they were, it was done in that way. I just went into the bank, there, and wanted to transfer this account, and whatever documents were necessary they were attended to and the documents were signed. I had the bank book, you could not transfer without the book. I took the book to the [58] bank. I just told

(Testimony of Francis A. Wilson.)

them here was an account that was going to be drawn out, and whatever documents were necessary were presented and signed and the money was redeposited in my mother's and my account. I did not ask them at the bank what to do, I asked them what documents were necessary, and the documents were presented. My father signed a receipt naturally for the account. He signed a receipt for the bank. I am not just exactly familiar with legal terms, all I can say is it was drawn out and redeposited. The account was drawn out completely and redeposited to the order of F. A. Wilson and Mrs. Henry Wilson. My name is F. A. and my mother's name is Mrs. Henry Wilson. Afterwards my brother's share was turned over to him. It was turned over by me I guess. My mother owned half of the first community interest, and then one-third of the balance went to my brother. My mother and I gave it to him, we gave him whatever it was, one-third that came out of the account. My mother got half, that was her property anyway, then we divided the other half, one-third to my mother, one-third to me, and one-third to my brother, and my mother and I transferred one-third of the half to my brother. We did this a number of years ago, I could not say exactly. It was after my father's death in 1928, some years ago, I don't remember exactly. I don't remember the details. The only talk I had with my father about what we were going to do was I just did as he told me to do. He said, "Here is this money,

(Testimony of Francis A. Wilson.)

and half of it belongs to your mother, she has worked hard for it and saved it and it is hers." He also said, "Divide the other half between your mother, yourself and your brother." That is all he said. He did not say anything about wishing his debts to be paid. I couldn't read his mind as to whether he knew we would pay his debts. I usually try to pay my debts. As to whether I [59] would leave those debts unpaid I don't know, it would depend entirely on the circumstances of each debt. As to expenses of last illness and funeral expenses I would pay them out of my own pocket. Nothing was ever said about probating my father's estate or saving the expenses of probate. I never discussed it. That matter was never discussed between my father and I. He never said a word about it. As to whether my father would have transferred that money to us if he had contemplated death, I do not think he was contemplating death, because he was always talking about what he was going to do. As to whether he would give up all his property, I would say that he would, because he was a man that was not very much interested in money, he thought it was more or less of a bother. He was rather thrifty and saved his money, he never wasted money, he never spent it foolishly. His desires were small, he accumulated a fortune and he kept that fortune intact and under his control up to three or four days before he died. As to whether I think that he might have thought that death was near for him and that he might just

(Testimony of Francis A. Wilson.)

as well give it to his dear wife and his boys and save them trouble and expense, I don't know what he thought. He didn't tell me what he ever thought. I have never thought about it before. I would not have the checks that were given, I never keep those, I keep them a year or two, that is about all. I had some money at the time my father died. I had been working for many years. It would be impossible for me to state how much. It was not so much money, but my fortune varies from year to year, and I could not tell what I had eight years ago. My father is the one that first mentioned to me that he wished to transfer the account. He did not talk about it in the presence of my mother. He did not send [60] for me and broach the subject to me. I went to see him every day and one day when I was there he just said he was going to do that. He did not say "My boy, I am pretty sick, there is that money in the bank, half belongs to your mother and I want you and your mother and your brother to share in the other half, I think we had better fix it up now." He said: "I am going to give this money to mother, half belongs to her, and divide up the balance between you three," and that is all he said. It is pretty hard for me to recall that he said it as abruptly and bluntly as that. He did not send for me as I used to go to see him frequently and he could depend on that I would be there every day. I did not broach the subject to him, I never mentioned the subject to him. He said "This is what I am

(Testimony of Francis A. Wilson.)

going to do with this money"; that is what he said. He said "I am going to give this money, half of it belongs to your mother, and that goes to her, and the balance is to be divided equally between your brother, yourself and your mother." I don't know as to why the money was withdrawn from the bank and was placed in the name of my mother and myself, instead of my mother, my brother and myself. I don't remember any particular reason for it. My brother was here in town at the time. I admit that after my father died my mother and I made a transfer to my brother of \$67,681.92 out of the bank account which we had received. My testimony has been that the total amount transferred in the San Francisco Bank was \$430,737.72. This was divided into sixths, my mother taking three-sixths for herself and then the remaining half being divided one-third of the half to my mother, one-third of the half to my brother, and one-third of the half to myself, that would be six sixths. My mother took three sixths as belong- [61] ing to her in the community property. Then of the other half she took one-third, which would be one-sixth of the total. I do not know how it happened that my brother received \$67,681.92 instead of \$71,789.92, and was charged \$3,425.36. Whoever figured that out, that is the conclusion they arrived at. I guess my attorneys must have figured it out, Mr. Dorr. I do not know whether the amount is correct. It might be that it was my brother's share of the expense of the funeral ex-

(Testimony of Francis A. Wilson.)

pense and the last illness of my father, it might have been I really do not recall it. It probably was. It is a matter of computation. I do not carry it in my mind, I don't know. Mr. Dorr did not handle the entire proceedings, he did not advise me with reference to the transfer of the money from my father to my mother and myself. He had nothing to do with that; all he handled was the inheritance tax matter, which arose some years after. He did not advise me as to the amount I should give my brother. He did not have anything to do with that. I probably figured it out myself. I have no recollection of how I arrived at that sum. One-sixth of \$430,737.73 is \$71,789.62. The amount actually turned over to my brother out of this account was \$67,681.92. I really could not say what occasioned the difference of \$4,107.70. It might have been that his share of the whole amount of the debts plus a \$5000 gift to charity was deducted, but I don't remember exactly. I would be the one that would make the calculations. I do not know, a good many figures have gone through my head since and I do not know exactly. I do not think that my brother has any recollection it because he didn't pay any attention to it. I think that he depended on me to such an extent that if I said "Here is your share," he would say, "All right, if that is [62] what is coming to me," and he would take it. I can't say what I told him when I gave him the money. I probably said "Here is your money," and didn't say anything more. I probably

(Testimony of Francis A. Wilson.)

deducted from his one-third of one-half his share of the expense, I probably did that, that is logical.

Cross Examination

By Mr. Meyerstein:

The Witness: It is customary for savings banks at the conclusion of each interest period to add the interest to the principal, so that with reference to the account in the San Francisco Bank, \$3,000 interest would indicate that interest accrued since the last interest date of the bank, and nothing more than that. That interest would be from the first of April, because the San Francisco Bank paid the interest quarterly. All of the income taxes which appear in the deduction when the estate tax was figured for the period 1921 to 1924 were contested by my father. The taxes that are sued for by the Government now were contested by my father. In all those cases the assessment of the Commissioner of Internal Revenue was not accepted by my father, and went to the Board of Tax Appeals. So far as the items in suit here are concerned, the Commissioner concluded that the deficiency was considerably in excess of what the Board of Tax Appeals ultimately allowed. My father acted in an advisory capacity to Wilson Bros. Company and had a drawing account for his services. For 1927 the drawing account was \$12,000.00. It had not been fixed in 1928, but he did have a drawing account of \$12,000 a year. The taxes which appear in the deductions for estate

(Testimony of Francis A. Wilson.)

tax purposes paid to Alameda County and the City of Piedmont were paid. They were for the fiscal year which started July 1, 1928. The taxes for the preceding year [63] had all been paid. The real property in Piedmont which was held in joint tenancy had been purchased with community funds.

The Court: As to this gift to charity in the sum of \$5000 who made that gift?

The Witness: The gift to charity in the sum of \$5000 was made I think by my mother. I paid part of it. I think my mother and myself paid that. I don't think my brother had anything to do with that. The charity was the Fred Finch Orphanage in Oakland. I really don't recall whether my father mentioned it to me or not. My mother was a director of the Fred Finch Orphanage. She was the person who was interested in the Orphanage. When my father was transferring the money to my mother and me, or about to transfer it, I don't think that he mentioned any specific amount that he wished to be given to the Orphanage. He probably said "Your mother is interested in this orphanage, and make a gift to them"; he left that up to us whether we wished to do it, or not. I do not really recall exactly whether he mentioned it at the time or about the time of the transfer was made. Of course, any charity my mother was interested in he was interested in; he used to give to various charities, and he might have said, "This is a charity in which mother is interested, give them something," I don't recall

(Testimony of Francis A. Wilson.)

it really. I really do not recall what he said at the time of the transfer about making a gift to the orphanage or what was said, if anything. I know we made this gift, yet what was said I don't remember. I think the gift was made on account of my mother's interest in the charity more than anything else, because she was very much interested in it, she was a director of it, or something; it was her charity and she was interested in it, and she [64] wanted them to have some money. The reason for giving it was her interest. Whether my father specifically directed it to be given to that charity or not I do not remember.

The fair market value of the real property at Piedmont is and was at that time \$45,000.

Redirect Examination

By Miss Phillips:

The Witness: If it is stated in "U. S. Exhibit 2" that the gift of \$5,000 to the charity, Fred Finch Orphanage, was made at the direction of the decedent then it was, because that document was drawn up at that time and I would have knowledge as to it then whereas I would not now. I do not think it was my father's suggestion then that we do that. I do not think at that particular time, but at some time he told me to give them \$5,000, or "If your mother wants to give them \$5,000 go ahead and give it to them." It is pretty hard to remember in years afterwards exactly what occurred.

(Testimony of Francis A. Wilson.)

Miss Phillips: Your Honor, I would like to ask permission to add to paragraph 15 of the complaint an allegation which I think the testimony will support, "That prior to the transfer of the money, the transfer of which had been alleged in the complaint, that it was understood and agreed with the decedent Henry Wilson that his debts should be paid out of the money so transferred." And I would like to argue it either orally or in briefs, as your Honor wishes.

Mr. Meyerstein: I wish to object to that on the broad ground it is an effort to state an entirely new cause of action from that stated in the original bill, the original bill being framed on the theory that the transfer operated as a fraud on the government, and this amendment being an attempt to set up [65] not a fraud on the government, but that there was an express provision made for the benefit and in aid of the government, which is an entirely different cause of action, and which would now be barred by the statute of limitations.

The Court: I think I will reserve my ruling on the application of Miss Phillips and permit you to call my attention to some authorities which you think apply to the point.

Mr. Meyerstein: In order to have the record straight, I wish to renew the motion to dismiss on the ground that the evidence fails to support the allegations of the bill and is insufficient to warrant any relief.

(Testimony of Francis A. Wilson.)

The Court: I will reserve my ruling on the last motion, also.

[Endorsed]: Filed May 26, 1938. [66]

[Title of District Court and Cause.]

PETITION FOR APPEAL.

To the Honorable Judges of the United States District Court for the Northern District of California:

The above-named defendants, Mary H. Wilson, Francis A. Wilson and Winfred T. Wilson, considering themselves aggrieved by the final decree and judgment made and entered in the above entitled suit, dated the 21st day of April, 1938, and filed on the 21st day of April, 1938, adjudging and decreeing that plaintiff have and recover of and from the said defendants jointly and severally the sums as set forth in said decree, do, and each of them does hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit in said suit upon and for all and singular the reasons specified and set forth [67] in the Assignment of Errors made and filed herewith, and for a reversal of said decree, and they pray and each of them prays that their petition be approved, and their appeal and the appeal of each of them may be allowed; that a citation be issued herein as provided by law, and that a tran-

script of the record, proceedings and documents upon which said final decree and judgment was made, duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit under and in accordance with the rules of such court in such cases made and provided.

And your petitioners further pray that an order may be made fixing the amount of bond on appeal and to stay enforcement or execution of said decree.

And your petitioners will ever pray.

Dated: May 26, 1938.

JOSEPH C. MEYERSTEIN,
Attorney for Defendants.

[Endorsed]: Filed May 26, 1938. [68]

[Title of District Court and Cause.]

ASSIGNMENT OF ERRORS.

The defendants and appellants, Mary H. Wilson, Francis A. Wilson, and Winfred T. Wilson, in connection with their Petition for Appeal say that in the making and entry of the final decree, dated the 21st day of April, 1938, and filed on the 21st day of April, 1938, and in the trial and proceedings in said cause, there is manifest error, and for error the defendants and appellants assign the following:

1. The Court erred in making and entering its decree that money transferred to the defendants by the deceased Henry Wilson, as alleged in the Bill of

Complaint, constituted a trust fund for the payment of debts owed by the said Henry Wilson, [69] including debts owed to the United States on account of tax liabilities, and that each of the said defendants is liable in full for said debts owed to the United States.

2. The Court erred in making and entering its decree that the plaintiff recover from each of the above-named defendants the principal sums and interest as set forth in said Decree, or any sum whatever.

3. The Court erred in making and entering its decree that plaintiff have and recover its costs against defendants.

4. The Court erred in failing to deny plaintiff's motion to amend the Bill of Complaint or to rule thereon.

5. The Court erred in failing to grant defendants' Motion to Dismiss plaintiff's Bill of Complaint.

6. The Court erred in finding that: "The circumstances attending the transfer show that the account was transferred in contemplation of death."; on the ground that it is a Conclusion of Law, not a Finding of Fact, and on the further ground that there was no such issue made by the Bill and Answer, and on the further ground that there was no evidence to support the same.

7. The Court erred in failing to find that at the time of the transfer Henry Wilson did not know that death was imminent and expected to live for a

considerable period thereafter, and the reason that he gave for making the transfer was because half of the money belonged to the defendant, Mary H. Wilson, as community property, and she had started out without anything and had worked hard and saved for many years, and it was her money, and as to the balance he wanted to give it to the defendants, Mary H. Wilson, Francis A. Wilson and Winfred T. Wilson; on the ground that it was material to the issues of this suit and fully support- [70] ed by the evidence, with no evidence to the contrary.

8. The Court erred in finding as set forth in Finding No. II: "On June 1, 1928, when said savings account was transferred, Henry Wilson owed income taxes to the United States for the years 1921-1924, inclusive, which had been assessed or otherwise adjudicated."; on the ground that there was no evidence to support the same and on the further ground that it is contrary to the evidence that said taxes at said time had been assessed or otherwise adjudicated.

9. The Court erred in finding as set forth in Finding No. II that "The expenses of his funeral and interment amounted to \$4,042.15,"; on the ground that the same did not constitute debts of Henry Wilson at the date of the transfer as set forth in Finding No. I.

10. The Court erred in finding as set forth in Finding No. II that income taxes of Henry Wilson for the year 1921 to 1924, inclusive, amounting to \$13,101.01 were paid by the defendants after Henry

Wilson's death out of the bank account which was transferred, on the ground that there is no evidence to support the same, that the same is contrary to the evidence which shows that the said taxes were paid by defendant, Mary H. Wilson.

11. The Court erred in finding as set forth in Finding No. III that "Transfer of said bank account by Henry Wilson to the defendants Mary H. and Francis A. Wilson was made in the privacy of their own home and was not a matter of public knowledge."; on the ground that there is no evidence to sustain the same, and the same is contrary to the undisputed evidence which shows that the transfer was made in the San Francisco Bank, San Francisco, California. [71]

12. The Court erred in failing to find that following the transfer of the bank account transferred by Henry Wilson on June 1, 1928, Henry Wilson still had and owned an interest in certain real property located in Piedmont, California, occupied as a residence by himself and wife, which had been acquired with community funds by deed on the 3rd day of October, 1922, which vested title thereto in the defendant, Mary H. Wilson, and the said Henry Wilson, as joint tenants with the right of survivorship, on the ground that the said facts are material to the issues of the case and sustained by the evidence, and with no evidence to the contrary.

13. The Court erred in failing to find that up to the date of the death of the said Henry Wilson, the said Henry Wilson had a drawing account and was

drawing a salary of \$12,000.00 per annum from Wilson Bros. Co., a corporation, for which he acted in an advisory capacity, upon the ground that the said facts are material to the issues of this case and are fully supported by the evidence, and with no evidence to the contrary.

14. The Court erred in finding as set forth in Finding No. IV that the fair market value of the interest of one of the joint tenants did not equal one-half of the fair market value of the residence, on the ground that there is no evidence whatsoever to support the same.

15. The Court erred in finding as set forth in Finding No. IV that the sum total of the debts of said Henry Wilson at the time of his transfer of said bank account exceeded the fair market value of his interest as joint tenant in said residence, on the ground that there is no evidence whatsoever to support [72] the said finding, and the said Finding is contrary to the undisputed evidence which shows that irrespective of whether all or only an undivided half interest in said residence was subject to the debts of the said Henry Wilson at the time of the transfer, the sum total of the debts of the said Henry Wilson was considerably less than the fair market value of his interest in said property.

16. The Court erred in failing to find that the sum total of the debts of the said Henry Wilson at the time of his transfer of said bank account was \$20,160.76, on the ground that the said facts are material to the issues of this case and fully sup-

ported by the evidence, and with no evidence to the contrary.

17. The Court erred in failing to find that each and all of the defendants are and were at the time of the commencement of this suit citizens of the State of California and of the United States of America, residing at Piedmont, in the State of California, and within the Northern District of California, on the ground that said finding is material to the issues of this case and fully supported by the evidence and with no evidence to the contrary.

18. The Court erred in its Conclusion of Law that the transfer of the bank account of the said Henry Wilson in the San Francisco Bank amounting to \$430,737.73, was fraudulent as to his creditors and that Henry Wilson was rendered insolvent by said transfer, on the ground that neither the facts found nor the evidence sustains the same, the same is contrary to the evidence, and there is no evidence whatsoever to sustain the same.

19. The Court erred in its Conclusion of Law that the [73] money so received by each of the defendants, Mary H., Francis A. and Winfred T. Wilson was received by each of them impressed with a trust for the benefit of creditors of the deceased Henry Wilson and the money so received by each of them constituted a trust fund for the payment of income taxes due and owing to the United States by the said Henry Wilson for the year 1918 and 1919 in the following amounts:

For 1918	\$4,782.35, and
for 1919	2,059.45

with interest thereon as allowed by law, on the ground that neither the facts found nor the evidence sustains the same, the same is contrary to the evidence, and there is no evidence whatsoever to sustain the same.

20. The Court erred in its Conclusion of Law that each of the defendants is accountable to this court for said trust fund so received by each of them for the payment of the claims in suit; on the ground that neither the facts found nor the evidence sustains the same, the same is contrary to the evidence, and there is no evidence whatsoever to sustain the same.

Dated: May 26, 1938.

(signed) JOSEPH C. MEYERSTEIN

Attorney for Defendants

[Endorsed]: Filed May 26, 1938. [74]

[Title of District Court and Cause.]

ORDER ALLOWING APPEAL

Defendants in the above entitled cause having filed in this Court their petition for appeal from the final judgment and decree entered herein on April1938, accompanied by Assignment of Errors, and prayer for reversal,

It is hereby ordered that an appeal as prayed for in said petition be and it is hereby allowed.

It is further ordered that the bond on appeal conditioned as required by law that appellants shall prosecute their appeal to effect and answer all costs and damages for delay if they fail to make good their plea, is hereby fixed in the sum of Three Hundred Dollars (\$300.00).

Dated: May 26, 1938.

A. F. ST. SURE

District Judge

[Endorsed]: Filed May 26, 1938. [75]

[Title of District Court and Cause.]

STIPULATION FOR ORDER FOR CERTIFICATION OF ORIGINAL EXHIBITS

It is stipulated and agreed by and between the attorneys for the respective parties hereto that an order may be made by the court directing the Clerk to certify the following original exhibits to the United States Circuit Court of Appeals for the Ninth Circuit as a part of the record on appeal herein, without the necessity of attaching the same thereto, transcribing, printing or photostating the same as part of such record; and that such exhibits, or any of them, may be used by counsel of either party hereto in the argument on the appeal herein, to the same extent as if said exhibits were transcribed, photographed or printed and attached to said record on appeal; that is to say: [76]

PLAINTIFF'S EXHIBITS

Exhibit Numbers	Tr. p.
1. Estate tax return of the Estate of Henry Wilson	7
2. Copy of claim for refund for Estate taxes	7
3. Certified copy of deed dated 10/3/22, J. L. Blowskey to Henry Wilson and others.....	8
4. Petition for determination of unpaid taxes in Superior Court of Alameda County.....	8
5. Certified copy of answer filed by Mary Wilson and Francis Wilson.....	8
6. Affidavit of Francis Wilson filed in Bu- reau of Internal Revenue.....	9
7. Certified copy Bureau records with cer- tificate of over-assessment.....	10

No Exhibits introduced for Defendants.

Dated: May 26, 1938.

FRANK J. HENNESSY

By ESTHER B. PHILLIPS

Attorney for Plaintiff

JOSEPH C. MEYERSTEIN

Attorney for Defendants

Dated: May 26, 1938.

So ordered:

A. F. ST. SURE

District Judge

[Endorsed]: Filed May 26, 1938. [77]

[Title of District Court and Cause.]

UNDERTAKING ON APPEAL

Whereas the above-named defendants, Mary H. Wilson, Francis A. Wilson, and Winfred T. Wilson, have prosecuted or are about to prosecute an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from a judgment and decree of the United States District Court, Southern Division of the Northern District of California, entered in said Court on the 21st day of April, 1938, and

Whereas said defendants and appellants are required to file this undertaking in the sum of Three Hundred Dollars (\$300.00), that said appellants will prosecute their appeal to effect and answer all damages for delay and costs.

Now, therefore, in consideration of the premises the undersigned Great American Indemnity Company, a corporation duly organized and existing under the laws of the [78] State of New York, and duly authorized and licensed by the laws of the State of California to do a general surety business in the State of California, does hereby undertake and promise on the part of the said defendants, Mary H. Wilson, Francis A. Wilson and Winfred T. Wilson, that they will prosecute their said appeal to effect and answer all damages for delay and costs on the appeal if they fail to make good their plea, not exceeding the sum of Three Hundred Dollars (\$300.00), to which amount it acknowledges itself justly bound.

And further, it is expressly understood and agreed that in case of a breach of any condition of the above obligation, the Court in the above-entitled matter may, upon notice to said Great American Indemnity Company of not less than ten days, proceed summarily in the action or suit in which the same was given to ascertain the amount which said Surety is bound to on account of such breach, and render judgment therefor against it and award execution therefor.

Dated at San Francisco, California, this 26th day of May, 1938.

[Seal] GREAT AMERICAN INDEMNITY
COMPANY

By F. S. BURLAND

Attorney-in-fact

State of California,
City and County of San Francisco—ss.

On this 26th day of May in the year one thousand nine hundred and thirty-eight, before me Irene Murphy, a Notary Public in and for said City and County, residing therein, duly commissioned and sworn, personally appeared F. S. Burland, known to me to be the Attorney-in-Fact of the Great American Indemnity Company, the corporation described in and that executed the within instrument, and also known to me to be the person who executed it on behalf of the Corporation therein named, and he acknowledged to me that such Corporation executed the same. [79]

In witness whereof, I have hereunto set my hand and affixed my official seal at my office, in the said City and County of San Francisco, the day and year in this certificate first above written.

[Seal] IRENE MURPHY

Notary Public in and for the City and County of
San Francisco, State of California.

My Commission will expire Mar. 10, 1942.

Approved: May 26, 1938.

A. F. ST. SURE

U. S. District Judge

[Endorsed]: Filed May 26, 1938. Walter B. Maling, Clerk. By C. C. Evensen, Deputy Clerk.

[80]

[Title of District Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD

To the Clerk of the above-entitled Court:

You are requested to make a transcript of record to be filed in the United States Circuit Court of Appeals for the Ninth Circuit pursuant to an appeal allowed in the above-entitled cause, and include in such transcript of record the following, to-wit:

1. Bill of Complaint.
2. Answer of Defendants.
3. Findings of Fact and Conclusions of Law.
4. Proposed Amendments and Additions of Defendants to Findings of Fact and Conclusions of Law Proposed by Plaintiff.
5. Decree.

6. Notice of Entry of Decree. [81]
7. Defendants' Exceptions to Findings of Fact, Conclusions of Law, and Decree.
8. Stipulation Extending Term for Purpose of Settling Bill of Exceptions, etc.
9. Stipulation in re Statement of Evidence.
10. Petition for Appeal.
11. Assignment of Errors Filed With Petition for Appeal.
12. Order Allowing Appeal and Fixing Supersedeas Bond.
13. Citation, with Admission of Service on Same.
14. Statement of Evidence.
15. Stipulation that the originals of certain Exhibits as a part of the record on appeal herein, be certified to the United States Circuit Court of Appeals for the Ninth Circuit by the Clerk of this Court with Order of this Court attached.
16. This Praeceptum.

Dated: May 26, 1938.

(signed) JOSEPH C. MEYERSTEIN

Attorney for Defendants

[Endorsed]: Filed May 26, 1938. [82]

District Court of the United States
Northern District of California

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD ON APPEAL

I, Walter B. Maling, Clerk of the United States District Court, for the Northern District of California, do hereby certify that the foregoing 82 pages, numbered from 1 to 82, inclusive, contain a full, true, and correct transcript of the records and proceedings in the case of United States of America vs. Mary H. Wilson, et al., No. 3812-S, as the same now remain on file and of record in my office.

I further certify that the cost of preparing the foregoing transcript of record on appeal is the sum of \$14.30 and that the said amount has been paid me by the Attorney for the appellants herein.

In witness whereof, I have hereunto set my hand and affixed the seal of said District Court, this day of June, A. D. 1938.

[Seal]

WALTER B. MALING

Clerk

C. C. EVENSEN

Deputy Clerk [83]

[Title of District Court and Cause.]

CITATION

United States of America—ss.

The President of the United States of America, to

United States of America (Plaintiff) Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's Office of the United States District Court for the Northern District of California, Southern Division, wherein Mary H. Wilson, Francis A. Wilson, and Winfred T. Wilson (Defendants) are appellants, and you are appellee, to show cause, if any there be, why the decree or judgment rendered against the said appellants, as in the said order allowing appeal mentioned, should not be corrected, [84] and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable A. F. St. Sure, United States District Judge for the Northern District of California, this 26th day of May, A. D. 1938.

A. F. ST. SURE

United States District Judge

Service of this Citation and receipt of a copy of Assignment of Errors acknowledged this 27th day of May, 1938.

FRANK J. HENNESSY

Attorney for Plaintiff [85]

[Endorsed]: No. 8875. United States Circuit Court of Appeals for the Ninth Circuit. Mary H. Wilson, Winfred T. Wilson and Francis A. Wilson, Appellants, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed, June 22, 1938.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.